

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
September 12, 2005

**D046831        Travis L. v. Superior Court of San Diego County/Cole et al.**

Let a peremptory writ of mandate issue directing the Superior Court of San Diego County to vacate its order of June 3, 2005, quashing petitioner's subpoena for personal appearance and production of documents and to conduct further proceedings consistent with the views we have expressed in this decision.

Petitioner is awarded costs in this proceeding. (Cal. Rules of Court, rule 56(l)).

This opinion is made final as to this court immediately upon filing. (Cal Rules of Court, rule 24(b)(3)).

Benke, J.; We Concur: McConnell P.J., O'Rourke, J.

**D047005        Cole v. The Superior Court of San Diego County/The People**

The petition is denied.

**D047075        Beck v. The Superior Court of San Diego County/Beef et al.**

The petition is denied.

**D045275        The People v. Bissell**

The judgment is modified to strike the order prohibiting contact between Bissell and Mella-Dee. The judgment is further modified to delete the portion that prohibits direct contact between Bissell and H.B. and to specify instead that there be no visitation between Bissell and the child victim pursuant to section 1202.05. As so modified, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment that reflects these modifications, and to forward a certified copy of the abstract to the Department of Corrections. Aaron, J.; We Concur: Huffman, Acting P.J., Irion, J.

**D045382        Coshow et al. v. City of Escondido et al.**

The petition for rehearing is denied.

**D045382        Coshow et al. v. City of Escondido et al.**

The opinion filed August 17, 2005 is ordered certified for publication.

**D045268        Kolender v. San Diego County Civil Service Commission/Berry**

The opinion filed August 22, 2005 is ordered certified for publication.

Court convened at 9 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

Clerk: D. E. Moore

**D044601        People v. Marquis**

Cause called on merits. Lewis A. Wenzell, Esq. argued for appellant. Anne Fraser, Deputy Attorney General argued for respondent. Mr. Wenzell replied. Cause submitted.

Court recessed at 9:21 a.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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September 12, 2005 (Continued)

**D044355        People v. Hasley**

Cause called on merits. Cristina Gabrielidis, Esq. argued for appellant. Stacy Tyler, Deputy Attorney General argued for respondent. Ms. Gabrielidis replied. Cause submitted.

**D045281        Bustos v. County of San Diego**

Cause called on merits. David P. Hubbard, Esq. argued for appellant. Thomas D. Bunton, Deputy County Counsel argued for respondent. Mr. Hubbard replied. Cause submitted.

**D044926        W v. W.**

Cause called on merits. Sandra W. argued for appellant, in pro per. Judith Klein, Esq. argued for the minors. Ms. Sandra W. replied. Cause submitted.

Court recessed at 10:04 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

Clerk: D. Moore

**D044616        Alpha Mechanical, Heating & Air Conditioning, Inc. v. Travelers Casualty & Surety Company of America**

Cause called on merits. Ali Salamid, Esq. argued for appellant. Theresa McAteer, Esq. argued for respondent. Mr. Salamid replied. Christopher E. McAteer, Esq. was present in oral argument, but did not argue. Cause submitted.

Court recessed at 1:56 p.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke

**D044255        Le v. Sam**

Cause called on merits. David A. Kay, Esq. argued for appellant. Randall L. Winet, Esq. argued for respondent. Mr. Kay replied. Cause submitted.

**D044802        The Hudlow Company, Inc. v. Ortega et al.**

Cause called on merits. Roger Sandberg Hansen, Esq. argued for appellant. Michael McVey, Esq. argued for respondent. Mr. Hansen replied. Cause submitted.

**D044309        Ring v. Marradi**

Cause called on merits. Louis E. Goebel, Esq. argued for appellant. Phillip Burkhardt, Esq. argued for respondent. Mr. Goebel replied. Cause submitted.

Court recessed at 3:25 p.m. until Tuesday, September 13, 2005 at 9 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
September 13, 2005

**D045843        In re X.V. et al., Juveniles**

**D046350        In re X.V., a Minor on Habeas Corpus**

The petition for writ of habeas corpus In re X.V., D046350, is consolidated with the pending appeal In re X.V., et al., D045843.

**D045843        In re X.V. et al., Juveniles**

**D046350        In re X.V. et al., a Minor on Habeas Corpus**

(consolidated) The appeal is dismissed insofar as it concerns A.V. The judgment terminating parental rights to X.V., is affirmed and the petition for writ of habeas corpus is denied. CERTIFIED FOR PUBLICATION. McConnell, P.J.; We Concur: Haller, J., Irion, J.

**D046610        Brittney S. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The petition is denied. Irion, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.

**D046955        In re Elshire on Habeas Corpus**

The petition is denied.

**D045898        People v. Rodriguez**

The judgment is affirmed. McDonald, J.; We Concur: McConnell, P.J., McIntyre, J.

**D046277        In re A. Z., a Juvenile**

The judgment is affirmed. McIntyre, J.; We Concur: McConnell, P.J., Nares, J.

**D046487        In re T. I., a Juvenile**

The judgment terminating parental rights is reversed. This matter is remanded to the juvenile court, with directions that it set a new section 366.26 hearing and order the Agency to re-notice to the BIA and the Cherokee Tribes. If, after notice, no Indian entity determines T.I. is an Indian child under ICWA, the court shall reinstate the judgment. If, on the other hand, after notice an Indian entity determines T.I. is an Indian child, the court shall proceed in accordance with ICWA. The remittitur is to issue forthwith. (Cal. Rules of Court, rule 20(c)(2)). Nares, Acting P.J.; We Concur: Haller, J., McIntyre, J.

**D045866        People v. Foster**

The judgment is affirmed. O'Rourke, J.; We Concur: McDonald, Acting P.J., Irion, J.

**D046134        In re Genaro M. et al., Juveniles**

Judgment affirmed. McConnell, P.J.; We Concur: Nares, J., McDonald, J.

**D046621        In re D.S., a Juvenile**

The appeal is dismissed. Huffman, J.; We Concur: Benke, Acting P.J., Aaron, J.

**D047077        Redevelopment Agency of the City of San Diego v. Superior Court of San Diego/Mesdaq**

The petition is denied.

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September 13, 2005 (Continued)

**D046990        Miller v. Superior Court of San Diego County/Miller**

The petition is denied.

Court convened at 9:00 a.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices  
Alex McDonald and Terry O'Rourke  
Clerk: D. Moore

**D045791        Carver & Associates, Inc. v. Anjani Investments, Inc.**

Cause called on merits. James C. Mitchell, Esq. argued for appellant. Richard W. Bohlander, Esq. argued for respondent. Cause submitted.

**D042717        Davila et al. v. Nickell et al.**

Cause called on merits. Michael H. Fish, Esq. argued for appellant, Louie and etc. James Kostas, Esq. was present in oral argument for appellant, Louie and etc., but did not argue. Daniel U. Smith, Esq. argued for respondent, Davila and etc. Stuart M. Eppsteiner, Esq. argued for respondent, Kuiper and etc. James C. Mitchell, Esq. argued for respondent, Rodriguez. Mr. Fish replied. Cause submitted.

Court recessed at 10:13 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices  
Alex McDonald and Terry O'Rourke  
Clerk: D. Moore

**D045479        In re Myracle C., a Juvenile**

**D046194        In re Myracle S.C., a Juvenile**

Cause called on merits. Susan Bookout, Esq. argued for appellant. L. David Casey, Deputy County Counsel argued for respondent. Christopher Blake, Esq. argued for the minor, and submitted additional authorities in open court. Ms. Bookout replied. Cause submitted.

**D043684        Huang v. Wenaas et al.**

Cause called on merits. Gretchen Maria Nelson, Esq. argued for appellant. George A. Shohet, Esq. was present in oral argument for appellant, but did not argue. Kathryn Karcher, Esq. argued for respondent. Paul Reynolds, Esq. was present in oral argument for respondent, but did not argue. Ms. Nelson replied. Cause submitted.

Court recessed at 2:40 p.m. until Wednesday, September 14, 2005 at 9 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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DIVISION ONE  
September 14, 2005

**D046443      People v. Whitney**

The judgment is affirmed. McDonald, J.; We Concur: McConnell, P.J., O'Rourke, J.

**D046063      Council of Community Clinics et al. v. Workers' Compensation Appeals Board et al.**

The Board's order denying Zenith's petition for reconsideration is annulled and the matter is remanded to the Board with directions to enter an order dismissing CNA's claim for contribution, as to Zenith only, as barred by section 5500.5, subdivision (e). Haller, J.; We Concur: Benke, Acting P.J., McDonald, J.

**D045865      People v. Foster**

The judgment is affirmed. McIntyre, J.; We Concur: Haller, Acting P.J., O'Rourke, J.

**D046200      People v. Pough**

The judgment is affirmed. McConnell, P.J.; We Concur: McDonald, J., Irion, J.

**D045025      Sanchez v. Children's Hospital and Health Center**

The judgment is affirmed. Children's is entitled to its costs on appeal. Irion, J.; We Concur: Benke, Acting P.J., Aaron, J.

**D045929      Board of Trustees of the California State University v. Superior Court of San Diego County/The Copley Press, Inc.**

Let a writ of mandate issue ordering the trial court to set aside that portion of its order compelling production of correspondence between the attorneys and/or their clients. In all other respects, the petition is denied. The stay issued by this court on February 28, 2005 is vacated. This opinion is made final immediately. (Cal. Rules of Court, rule 24 (b)(3)). The parties are to bear their own costs in the writ proceeding. CERTIFIED FOR PUBLICATION. Nares, Acting P.J.; We Concur: Haller, J., Aaron, J.

**D046064      Campbell II, as Trustee etc. v. Superior Court of San Diego County/La Barrie**

The petition is denied. Campbell shall bear costs in this writ proceeding. CERTIFIED FOR PUBLICATION. Aaron, J.; We Concur: McConnell, P.J., Benke, J.

**D045573      Pinnavaia v. MBNA Corporation**

The judgment is affirmed. Nares, J.; We Concur: Huffman, Acting P.J., Aaron, J.

**D046303      In re Mikal H., a Juvenile**

The judgment terminating parental rights is reversed, and the matter is remanded to the juvenile court with directions to order Agency to (1) make proper inquiry of the three federally recognized Cherokee Indian tribes, and (2) to comply with the notice provisions of ICWA, the relevant case law interpreting ICWA and the views expressed in this opinion. If, after proper inquiry and notice, a tribe claims Mikal is an Indian child, the juvenile court shall proceed in conformity with all provisions of ICWA. If, on the other hand, no response is received or no tribe claims that Mikal is an Indian child, the judgment terminating parental rights shall be reinstated. Nares, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

**D046581      People v. Mejia**

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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**D046069        In Re Cache L., a Juvenile**

Justices Nares, Irion, and Huffman have read and considered Respondent's Motion to Dismiss Appeal as Abandoned or in the Alternative to Strike the Appellant's Opening Brief as Defective; the Child's Appellate Counsel's Joinder with Respondent Agency's Motion to Dismiss the Appeal, and Appellant's Response. The motion to dismiss the appeal is granted. The appeal is dismissed.

Court convened at 9 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Joan Irion  
Clerk: D. Moore

**D045507        Rinehart v. Boys & Girls Club of Chula Vista**

Cause called on merits. Michael Trestick, Esq. argued for appellant. No appearance by respondent's counsel. Cause submitted.

Court recessed at 9:12 a.m. to change panel members. New panel members: The Honorable Patricia Benke Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and James McIntyre

**D046082        In re Hutto on Habeas Corpus**

Matter called on merits. Carmela F. Simoncini, Esq. argued for petitioner. Warren Robinson, Deputy Attorney General argued for respondent. Ms. Simoncini replied. Matter submitted.

Court recessed at 9:50 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Alex McDonald  
Clerk: D. Moore

**D043744        Molnar v. Regents of the University of California et al.**

Cause called on merits. Paul Molnar argued for appellant, in pro per. Kari D. Searles, Esq. argued for respondent. Mr. Molnar replied. Cause submitted.

Court recessed at 1:48 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

**D046281        City of San Diego v. Superior Court/Hanson et al.-RPI**

Matter called on merits. David Lawrence Brodie, Deputy City Attorney argued for petitioner. William John Roberts, Esq. argued for real party in interest. Mr. Brodie replied. Matter submitted.

Court recessed at 2:22 p.m. to change panel members. New panel members: The Honorable Alex McDonald, Acting Presiding Justice, and The Honorable Associate Justice James McIntyre

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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DIVISION ONE  
September 14, 2005 (Continued)

**D044712        People v. O'Campo**

Cause called on merits. Dabney B. Finch, Esq. argued for appellant. Warren Robinson, Deputy Attorney General argued for respondent. Ms. Finch replied. To be submitted once Justice Haller has reviewed the oral argument CD.

**D045644        People v. Bithell**

Cause called on merits. Nicholas De Pento, Esq. argued for appellant. Scott Taylor, Deputy Attorney General argued for respondent. To be submitted once Justice Haller has reviewed the oral argument CD.

**D044135        Cameron v. Desert Pacific Council, Boy Scouts of America**

Cause called on merits. Steven G. Amundson, Esq. argued for appellant. Theodore Emery Bacon, Esq. argued for respondent. Mr. Amundson replied. To be submitted once Justice Haller has reviewed the oral argument CD.

**D045288)        Canam Properties, LLC et al.**

**D045786)        Canam Properties, LLC et al. v. Micheli**

Cause called on merits. Douglas S. Gilliland, Esq. argued for appellant. Cathy Fitch, Esq. argued for respondent. Mr. Gilliland replied. . To be submitted once Justice Haller has reviewed the oral argument CD.

Court recessed at 3:48 p.m. until Thursday, September 15, 2005 at 8:30 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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DIVISION ONE  
September 15, 2005

**D044501        Dez Construction v. Calexico Unified School District/Denton**

The order is affirmed. The District is entitled to costs on appeal. McConnell, P.J.;  
We Concur: Huffman, J., Aaron, J.

**D044807        State Farm Life Insurance Company v. Covington et al./Renko**

The judgment of the trial court is affirmed. Respondents are awarded costs on appeal. Aaron, J.;  
We Concur: McConnell P.J., Irion, J.

**D043827        In re the Marriage of Clarkson**

We affirm the order awarding Thomas primary physical custody. Benke, Acting P.J.;  
We Concur: Nares, J., McDonald, J.

**D046688        In re Tyler G., a Juvenile**

The appeal is dismissed. Nares, J.; We Concur: Huffman, Acting P.J., McDonald, J.

**D044926        In re the Marriage of W.**

The juvenile court's order requiring Sandra to execute a protective order before inspecting the juvenile court records and denying Sandra's request to copy those records is affirmed. McIntyre, J.;  
We Concur: Nares, Acting P.J., McDonald, J.

**D046889        Steven G. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Steven G. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 38.1 will not be filed as there are no viable issues for writ review. The case is dismissed.

**D047120        Race et al. v. Superior Court of San Diego County/Sierra Window Concepts, LTD.**

The petition is denied.

**D043712        In re the Marriage of Esparza**

The December 9, 2003 order denying appellant's set aside motion is affirmed. Appellant's appeal from the January 13, 2004, March 8, 2004, and April 13, 2004 orders is dismissed. Respondent is ordered, at his expense, to return the record on appeal to appellant within 10 days from the date this opinion is filed. The parties shall bear their own costs on appeal. O'Rourke, Acting P.J.; We Concur: Aaron, J., Irion, J.

**D046727        Teresa M. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

Petitioner Vincent T. has filed an amended petition for extraordinary writ on his own behalf. It does not comply with this court's order of August 29, 2005. The case is dismissed.

**D046992        Maria B. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Maria B. has notified the court on behalf of the petitioner that a petition for Writ of mandate under Rule 38.1 will not be filed as there are no viable issues for writ review. The case is dismissed.



COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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September 15, 2005 (Continued)

Court convened at 8:30 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Joan Irion  
Clerk: D. Moore

**D044992        Alemu v. Venn-Watson et al.**

Cause called on merits. Desalegn Alemu, argued for appellant in pro per. Matthew Souther, Esq. argued for respondent. Mr. Alemu replied. Cause submitted.

Court recessed at 8:47 a.m. until 9 a.m.

Court reconvened at 9 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justice James McIntyre  
Clerk: D. Moore

**D044775        Crist et al. v. Alpine Union School District**

Cause called on merits. Reza Keramati, Esq. argued for appellant. Paul Vincent Carelli, Esq. argued for respondent, Alpine Union School District. Mr. Keramati replied. To be submitted once Justice Haller has reviewed the oral argument CD.

**D045003        Toscano v. Truong**

Cause called on merits. Kathleen Toscano, argued for appellant in pro per. Richard Pray, Esq. argued for respondent. Ms. Toscano replied. To be submitted once Justice Haller has reviewed the oral argument CD.

Court recessed at 9:40 a.m. to change panel members. New panel members: The Honorable James McIntyre, Acting Presiding Justice, and The Honorable Associate Justices Cynthia Aaron and Joan Irion

**D045032        In re Lowman on Habeas Corpus**

Matter called on merits. Amanda Benedict, Esq. argued for petitioner. Richard S. Armstrong, Deputy District Attorney argued for respondent. Ms. Benedict replied. Matter submitted.

Court recessed at 9:58 a.m. to change panel members. New panel members: The Honorable James McIntyre, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion

**D044843        Connelly v. Pickford New Homes Real Estate Inc., et al.**

Cause called on merits. Mary Katherine Reynolds, Esq. argued for appellant. Michael David Fabiano, Esq. argued for respondent, Pickford New Homes Real Estate. H. Paul Kondrick, Esq. argued for respondent, Intergulf Development Group and etc. Ms. Reynolds replied. Cause submitted.

Court recessed at 10:41 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Cynthia Aaron  
Clerk: D. Moore

**D045347        Woods et al. v. Neptune Terrace Condominium Association et al.**

Cause called on merits. Samy S. Henein, Esq. argued for appellant. Richard Martha, Esq. argued for respondent. Mr. Henein replied. Cause submitted.

**D045429        Grossmont Union High School District v. TIG Insurance Company**

Cause called on merits. Lindsay Robert Brack, Esq. argued for appellant. Chad B. Wootton, Esq. argued for respondent. Mr. Brack replied. Cause submitted.

Court recessed at 1:55 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justice Cynthia Aaron

**D045553        In re Moore on Habeas Corpus**

Matter called on merits. Casey Donovan, Esq. argued for petitioner. Robert Foster, Deputy Attorney General argued for respondent. Mr. Donovan replied. Matter to be submitted once Justice Haller has reviewed the oral argument CD.

Court adjourned at 2:25 p.m.

**D047126        People v. Saltzman**

The appeal is dismissed without prejudice to refiling a notice of appeal after an order or judgment has been entered.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
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DIVISION ONE  
September 16, 2005

**D045354        Independent Association of Mailbox Center Owners Inc., et al. v. Superior Court of San Diego County/Mail Boxes etc. USA Inc., et al.**

Let a writ of mandate issue directing the superior court to vacate its orders (1) denying consolidation, (2) imposing a stay order regarding the mediation petitioners, and (3) delegating the entire issue of costs allocation to the arbitrators. The superior court is directed to enter new and different orders (1) striking as unconscionable those provisions of the subject franchise agreements' arbitration clauses (a) that prohibit representative or class actions from being handled in the arbitration forum; and (b) that limit the arbitrators from granting otherwise authorized relief under statute; (2) granting the motion to consolidate, (3) lifting the stay order regarding IAMCO and the mediation petitioners, and (4) providing for appropriate further proceedings regarding the requests for fee shifting with respect to determining what appropriate fee allocation orders must be made, if any, to enable the franchisees to go forward in arbitration on any unwaivable statutory claims. In all other respects the petition is denied. Petitioners shall recover their costs in this writ proceeding. Huffman, J.; We Concur: McConnell, P.J., Aaron, J.

**D046418        In re Alonzo R., a Juvenile**

The appeal is dismissed. Benke, Acting P.J.; We Concur: O'Rourke, J., Aaron, J.

**D046082        In re Hutto on Habeas Corpus**

The petition for writ of habeas corpus is denied. Huffman, J.; We Concur: Benke, Acting P.J., McIntyre, J.

**D045017        CPF Agency Corp. v. R&S Towing Service**

The judgment is reversed and the matter remanded with directions that the court enter a new order denying defendant's motion to strike. Plaintiff shall recover its costs on appeal. CERTIFIED FOR PUBLICATION O'Rourke, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

**D041058        Koebke et al. v. Bernardo Heights Country Club**

Upon remand from the California Supreme Court, we remand this case to the superior court for further proceedings consistent with the Supreme Court's opinion. (Koebke v. Bernardo Heights Country Club (2005) 36 Cal.4th 824, 855.) Nares, J.; We Concur: Benke, Acting P.J., McIntyre, J.

**D047010        In re Jerry on Habeas Corpus**

The petition is denied.